IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 16, 2005 Session

# SAMMY HARGROVE v. STATE OF TENNESSEE, DEPARTMENT OF SAFETY

**Appeal from the Chancery Court for Davidson County**
**No. 03-1197-II Carol McCoy, Chancellor**

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**No. M2004-00410-COA-R3-CV - Filed September 15, 2005**

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The appellee's automobile was forfeited, after notice and hearing, for a violation of the DUI law. He was arrested and indicted for DUI, but an order *nolle prosequi* was entered. The appellee argues that the forfeiture statute cannot be enforced absent a conviction for DUI. The trial court agreed. Judgement reversed.

**Tenn R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed**

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J.W.S. and DAVID R. FARMER, J., joined.

Lindsay Carroll Barrett and Timothy Valton Potter, Dickson, Tennessee, for appellee Sammy Hargrove.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; Lizabeth A. Hale, Assistant Attorney General, for the appellant, State of Tennessee, Department of Safety.

## OPINION

Mr. Hargrove was arrested and later indicted for DUI. He was a repeat offender. For reason(s) not disclosed in the record, an order *nolle prosequi* was filed June 17, 2003 in the Criminal Court of Humphrey County.

A forfeiture warrant was issued on April 4, 2002 for Mr. Hargrove's automobile pursuant to Tenn. Code Ann. § 55-10-403. The Administrative Law Judge determined that Mr. Hargrove was driving his automobile under the influence for a second time within a five-year period thus making the vehicle subject to forfeiture as provided by Tenn. Code Ann. § 55-10-403(k). Judicial review was sought by Mr. Hargrove. The Chancellor reversed the forfeiture, holding that a conviction for DUI was a prerequisite to a forfeiture. The Commissioner of the Department of Safety appeals and presents for review the issues of (1) whether a conviction for DUI is a condition precedent to a

forfeiture of the vehicle, and (2) whether an administrative finding that a driver has violated the DUI statute unconstitutionally infringes upon the driver's right to a trial on the DUI offense. We answer both issues, NO. Review is *de novo*, with no presumption of correctness, and we accord no deference to the judgment. ***S. Constructors, Inc. v. Loudon County Bd. of Educ.***, 58 S.W.3d 706 (Tenn. 2001).

It is provided by statute that:

> The vehicle used in the commission of a person's second or subsequent *violation* of § 55-10-401, or the second or subsequent violation of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202 for all forfeitures authorized by this subsection. (Emphasis supplied).

This is a remedial statute. It does not serve a punitive purpose. The legislative intent is clearly manifested by an associate statute, Tenn. Code Ann. §55-50-403(k)(3) which provides:

> It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

Mr. Hargrove was arrested for driving under the influence of an intoxicant. The arresting officer testified that he observed the vehicle being driven in an erratic manner. After stopping Mr. Hargrove, the officer smelled the odor of alcoholic beverages on him, and he admitted to the officer that he had had "too much" to drink later saying he had six beers in two hours. He was unsteady on his feet. Mr. Hargrove did not testify at the forfeiture hearing.

The trial court ruled that the forfeiture without a criminal conviction was a violation of Mr. Hargrove's constitutional rights, commenting that:

> In order to demonstrate that Mr. Hargrove's vehicle was properly seized and subject to forfeiture, the Department had only to introduce evidence of Mr. Hargrove's conviction for the March, 2002 violation along with his DUI history.

The Commissioner argues that while proof of a criminal conviction would be compelling evidence in favor of the forfeiture, it is not the only way to prove a violation of the statute. We agree. A forfeiture will often occur before the criminal trial is completed. *See, e.g.,* ***Stuart v. State Department of Safety***, 963 S.W.2d 28, 30 n.2 (Tenn. 1998) (the order forfeiting Stuart's property was entered two months prior to his guilty plea in the criminal trial).

***State v. Moses***, 584 S.W.2d 825 (Tenn. Crim. App. 1979), is analogous to the case at Bar. Moses was indicted for possession of marijuana with intent to sell, and his vehicle was seized under the drug control statutes then in effect. The case was eventually dismissed and he sought and obtained an order from the criminal trial court for the return of his vehicle. We reviewed the case and the statutes and determined that "the legislature has vested with the Commissioner of Safety the exclusive jurisdiction to initially determine whether property seized incidently to a violation of the Drug Control Act should be forfeited or returned to the lawful claimant." Thus, even the dismissal of the criminal case did not divest the authority of the Commission to determine whether or not to forfeit the vehicle.

The administrative law judge sits as the finder of fact, although he imposes civil, not criminal, penalties. The ruling of the trial court would effectively remove the fact-finding ability of the administrative judge and modify the burden of proof established by the Legislative from a preponderance of the evidence to guilt beyond a reasonable doubt by requiring a *criminal conviction* for a violation of the DUI law, Tenn. Code Ann. § 55-10-401, in order to satisfy that element of the forfeiture statue set out in Tenn. Code Ann. § 55-10-403(k)(1).

When interpreting a statute, the courts must effectuate the intent of the legislature which is determined by considering the natural and ordinary meaning of the words of the statute. *See* ***Mooney v. Sneed***, 30 S.W.3d 304, 306 (Tenn. 2000). "When the language of the statute is clear and unambiguous, then this Court usually applies the plain language of the statute to resolve the issue." ***Lipscomb v. Doe***, 32 S.W.3d 840, 844 (Tenn. 2000). Courts ascertain legislative intent "primarily from the natural and ordinary meaning of the language used. Without forced or subtle construction that would limit or extend the meaning of the language." ***Hamblen County Educ. Ass'n v. Hamblen County Bd. of Educ.***, 892 S.W.2d 428, 431 (Tenn. Ct. App. 1994) (citing ***National Gas Distributors, Inc. v. State***, 804 S.W.2d 66 (Tenn. 1991). Thus, "[i]f a statute is unambiguous, legislative intent is to be determined from the face of the statute . . . It is not for the courts to question the wisdom of legislative enactments." *Id.* at 432.

We have noted that the word "violation" rather than the word "conviction" is utilized in Tenn. Code Ann. § 55-10-403(k)(1). A violation is an infraction or breach of the law; a transgression. Black's Law Dictionary 1564 (7th Ed.). A conviction is the act or process of judicially finding a person guilty of a crime; the state of having been proved guilty. The Legislature when promulgating Tenn. Code Ann. § 55-10-403, used both "violation" and "conviction" in the statute, and it is apparent from the usage that the Legislature did not consider these two words to mean the same thing. For example, Tenn. Code Ann. §55-10-403(a)(1) provides that "[a]ny person or persons violating the provision of §§ 55-10-401 - 55-10-404 shall, *upon conviction thereof*, for the first offense be fined . . ." (Emphasis added). *See also* Tenn. Code Ann. § 55-10-403(a)(3) ("For purposes of this section, a person who is convicted of a violation of § 55-10-401 . . . ").

We hold that a conviction for DUI is not a prerequisite to a forfeiture of a vehicle.

Turning to the second issue, the trial court ruled that only the general sessions court is vested with the authority to determine whether Tenn. Code Ann. § 55-10-401, the DUI statute, was violated. This conclusion overlooks the fact that this is a civil proceeding, requiring preponderant proof as opposed to proof beyond a reasonable doubt. We think the various statutory schemes, and the various statutes, clearly reveal the legislative intent to authorize forfeiture even in cases where the party was found innocent of the offense giving rise to the forfeiture action, an *in rem* proceeding against the property only. ***Stuart v. State Department of Safety***, 963 S.W.2d 28 (Tenn. 1998).

Mr. Hargrove argues that at the time of the administrative hearing, he faced a criminal charge for fourth offense DUI, a Class E felony with serious consequences if convicted, and that he exercised his constitutional right not to testify. He extends this argument by asserting that his fear of prosecution, and subsequent sentence, enabled the State to succeed in this action. But this argument overlooks the fact that the testimony of the arresting officer clearly established a *prima facie* case and it was therefore incumbent upon Mr. Hargrove to present evidence favorable to his theory of the case. The judgment is accordingly reversed and the case is remanded to the administrative agency. Costs are assessed to the appellee.

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WILLIAM H. INMAN, SENIOR JUDGE